

STATEMENT OF SCOPE

Department of Workforce Development

Rule No:

Chs. DWD 100, 126 to 129, 131, 132, 140, and 149

Relating to:

Pre-Employment Drug Testing

Rule Type

Permanent and Emergency

Finding/nature of emergency

Under 2015 Wis. Act 55, no finding of emergency is required.

Detailed Description of the Objective of the Proposed Rule

The proposed permanent and emergency rules will amend chs. DWD 100, 126, 127, 128, 129, 132, 140 and 149, relating to the unemployment insurance program, and create ch. DWD 131, subchapters I and II, relating to pre-employment drug testing for unemployment insurance benefit claimants. The proposed rules will establish guidelines that may disqualify benefit claimants who refuse to take a pre-employment drug test, or who fail a pre-employment drug test and choose not to participate in a drug rehabilitation program. The proposed rules will provide that refusing to take a pre-employment drug test, or failing a pre-employment drug test and choosing not to participate in a drug rehabilitation program, may amount to the refusal of suitable work and cause ineligibility for unemployment benefits.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

No existing policies are related to the proposed permanent or emergency rules. As directed by 2015 Wis. Act 55, the proposed rules will:

- Establish procedures for employers who voluntarily submit the results of a positive drug test conducted on an individual as a conditional offer of employment.
- Establish procedures for employers who notify the department that an individual declined to submit to a drug test as a conditional offer of employment.
- Establish standards for rebutting a presumption of refusal of suitable work if a claimant declines to take a pre-employment drug test or fails a pre-employment drug test.

- Identify the period of ineligibility for unemployment benefits that must elapse, or the requalification requirements that must be satisfied, or both, for a claimant who declined to submit to a pre-employment drug test or failed a pre-employment drug test.
- Identify the parameters for a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy to be considered enrolled in and in full compliance with the requirements of a substance abuse treatment program.
- Provide that if a claimant enrolled in a substance abuse treatment program is required to submit to additional drug tests, the claimant is allowed to have at least one more positive test, following the initial drug test, and still be considered in compliance with the substance abuse treatment program requirements.
- Identify the parameters for a job skills assessment for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the job skills assessment.

The policy alternative is to do nothing. If the department does not promulgate the proposed permanent and emergency rules, the department's administrative rules will be inconsistent with statutory requirements.

Detailed explanation of statutory authority for the rule, including the statutory citation and language

Section 108.04 (8) (b), Stats.

“[t]he department shall promulgate rules identifying a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for an employee who becomes ineligible for benefits as provided in this paragraph to again qualify for benefits and specifying how a claimant may overcome the presumption in this paragraph.”

Section 108.133 (2), Stats.

"The department shall establish a program to test claimants who apply for regular benefits under this chapter for the presence of controlled substances in accordance with this section . . ."

Section 108.133(4) (b), Stats.

"The department shall promulgate rules necessary to implement par. (a)."

Section 108.14 (2), Stats.

“[t]he department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.”

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule

The total amount of staff time is estimated to be approximately 1,500 hours.

List with description of all entities that may be affected by the proposed rule

The proposed permanent and emergency rules may affect individuals who collect unemployment insurance benefits and either refuse to take, or fail, a drug test that is required by employers as a conditional offer of employment. The proposed rules may also affect employers as unemployed individuals may collect fewer unemployment insurance benefits, resulting in fewer charges to employers' unemployment insurance accounts and employers possibly paying less unemployment insurance tax.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

There are no existing or proposed federal regulations relating to pre-employment drug testing. There are federal recommendations relating to approved procedures for the collection and evaluation of drug tests.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses)

The proposed permanent and emergency rule may have a positive effect on businesses, including small businesses. This would occur if a claimant is found to have refused an offer of suitable work under the provisions of the rule, which would reduce the amount of unemployment benefits charged to an employer's unemployment insurance account.

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